

REMARKS

Applicants have amended claims 1-2, 15, 26-28, 40, and 56, and have canceled claims 1-25, 51-54, and 57-58 during prosecution of this patent application. Applicants are not conceding in this patent application that said amended and canceled claims are not patentable over the art cited by the Examiner, since the claim amendments and cancellations are only for facilitating expeditious prosecution of this patent application. Applicants respectfully reserve the right to pursue said amended and canceled claims, and other claims, in one or more continuations and/or divisional patent applications.

In a telephonic interview on December 16, 2008 between Examiner Aaron N. Strange and Applicant's Representative Jack P. Friedman, the claims were discussed in relation to the cited prior art and claim amendments for potentially overcoming the cited prior were discussed.

The amended subject matter in independent claims 26 and 28 is supported in FIG. 1 of the present patent application, which depicts the control server 25 and the separate communication channels 32, 33, 35, 36, 38, and 39 being characterized by no coinciding path segments among the separate communication channels between the control server and each server of the at least two servers in each cluster (i.e., servers W_1 , W_2 , A_1 , A_2 , D_1 , D_2).

New claims 59 and 62 are supported in FIG. 1 of the present patent application, which depicts the control server 25 linked to load balancers L_W , L_A , and L_D via a separate link paths between the control server and each load balancer, wherein all said separate link paths concurrently exist.

New claims 60-61 and 63-64 are supported in FIG. 1 of the present patent application, which depicts the recited paths physically connecting together the load balancers with clusters and

the control server.

The Examiner rejected claims 57 and 58 under 35 U.S.C. § 112, first paragraph.

The Examiner rejected claims 26-50 and 55-58 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Stone (US PGPub 2003/0036886) and Hickman et al.(US 6,523,036) and further in view of Adiga et al. (US 5,892,913).

Applicants respectfully traverse the § 112 and § 103 rejections with the following arguments.

35 U.S.C. § 112, First Paragraph

The Examiner rejected claims 57 and 58 under 35 U.S.C. § 112, first paragraph.

Since claims 57 and 58 have been cancelled, the rejection of claims 57 and 58 under 35 U.S.C. § 112, first paragraph is moot.

35 U.S.C. § 103(a)

The Examiner rejected claims 26-50 and 55-58 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Stone (US PGPub 2003/0036886) and Hickman et al.(US 6,523,036) and further in view of Adiga et al. (US 5,892,913).

Since claims 57 and 58 have been cancelled, the rejection of claims 57 and 58 under 35 U.S.C. § 103(a) is moot.

Applicants respectfully contend that claims 26 and 28 are not unpatentable over Stone and Hickman and further in view of Adiga, because Stone and Hickman and further in view of Adiga does not teach or suggest each and every feature of claims 26 and 28.

For example, Stone and Hickman and further in view of Adiga does not teach or suggest the feature: “a plurality of identical servers, each cluster of the network being directly connected to at least one other cluster of the network, wherein each pair of clusters directly connected to each other is characterized by each server in a first cluster of the pair of clusters being directly connected to at least one server in a second cluster of the pair of clusters via a communication link; ... said control server being directly linked to each server of at least two servers in each cluster via a separate communication channel between the control server and each server of the at least two servers in each cluster, *wherein there is no coinciding path segment among the separate communication channels between the control server and each server of the at least two servers in each cluster*” (emphasis added).

The Examiner argues: “Neither Stone nor Hickman et al. teach each cluster of the network being directly connected to at least one other cluster of the network, wherein each pair of clusters

directly connected to each other is characterized by each server in a first cluster of the pair of clusters being directly connected to at least one server in a second cluster of the pair of clusters via a communication link; said control server being directly linked to at least two servers in each cluster via a communication channel between the control server and the at least two servers in each cluster... In the same field of endeavor Adiga et al. teach an architecture having a plurality of clusters directly connected to each other with a control server directly connected to each server in the cluster (fig. 6a and 6b, Col. 9 line(s) 64-67- Col. 10 line(s) 1-7).”

In response, Applicants respectfully contend that Adiga uses the ATM switch in FIG. 6A to effectuate direct connections between servers in different clusters via respective communication channels that pass through the ATM switch 186. Consequently, Adiga’s communication channels between the control server and each server in each cluster have overlapping path segments. For example in FIG. 6A of Adiga, the communication channels between the control server 160 and the servers of the cluster directly linked to control server 152 have overlapping path segments 198 and 190.

In addition, Applicants respectfully contend that it is not obvious to modify the primary reference of Stone by the secondary reference of Adiga by directly connecting servers in different clusters 20, 30, and 40 depicted in Stone, FIG. 12. A reason why the preceding modification of Stone is not obvious is that this modification does not promote Stone’s objective of monitoring service level objectives (SLO’s) by using service agent 97 and node monitors 28, 38, and 48 to monitor failures of servers in the clusters (see Stone, Abstract and Pars. [0027], [0040]-[0046], and [0099]-[0102]). Thus, an addition of an ATM switch would add cost and complexity to Stone’s invention without improving implementation of Stone’s monitoring objective. Moreover,

an addition of an ATM switch may actually degrade the monitoring functionality, because the direct communication between servers in different clusters via the ATM switch would not be monitored by the monitoring scheme that Stone has described.

Based on the preceding arguments, Applicants respectfully maintain that claims 26 and 28 are not unpatentable over Stone and Hickman and further in view of Adiga, and that claims 26 and 28 are in condition for allowance. Since claims 27, 40-50 and 55-57 depend from claim 26, Applicants contend that claims 27, 40-50 and 55-56 are likewise in condition for allowance. Since claims 29-39 depend from claim 28, Applicants contend that claims 29-39 are likewise in condition for allowance.

CONCLUSION

Based on the preceding arguments, Applicants respectfully believe that all pending claims and the entire application meet the acceptance criteria for allowance and therefore request favorable action. If the Examiner believes that anything further would be helpful to place the application in better condition for allowance, Applicants invites the Examiner to contact Applicants' representative at the telephone number listed below. The Director is hereby authorized to charge and/or credit Deposit Account 09-0457 (IBM).

Date: 12/22/2008

Jack P. Friedman
Jack P. Friedman
Registration No. 44,688

Customer No. 30449
Schmeiser, Olsen & Watts
22 Century Hill Drive - Suite 302
Latham, New York 12110
Telephone (518) 220-1850
Facsimile (518) 220-1857
E-mail: jfriedman@iplawusa.com